

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM B. LACY and DEPARTMENT OF THE NAVY,
MARE ISLAND NAVAL SHIPYARD, Vallejo, Calif.

*Docket No. 96-1259; Submitted on the Record;
Issued June 29, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs abused its discretion in denying authorization for a dental implant reconstruction.

In the present case, appellant filed a claim alleging that he sustained injuries on November 16, 1989, when a hauling wire snapped and struck him. The accepted injuries included a completely avulsed mandible fracture and several fractured teeth. In a report dated October 29, 1993, Dr. C. Michael Quinn, a dentist, proposed that appellant undergo surgery involving the placement of 12 implants in the upper and lower jaw. The Office referred a statement of accepted facts and medical records to Dr. Jeffrey W. Bennett, a dentist, for evaluation. In a report dated January 30, 1994, Dr. Bennett opined that the proposed implant treatment was not appropriate. Dr. Bennett stated that appellant was a moderate smoker and this could lead to a condition similar to periodontitis of natural teeth. Dr. Bennett also stated that there was inadequate documentation as to appellant's dental condition, such as the shape, volume, and quality of bone for implant placement.

In a report dated September 22, 1995, Dr. O.C. Tebrock, a dentist, indicated that appellant had dentures made in April 1990 and that appellant reported an inability to wear the dentures. Dr. Tebrock noted a hyperactive gag reflex. He stated that appellant had quit smoking, and he discussed a treatment plan that included 12 implants with a removable reconstruction over a metal substructure attached to the implants. The Office, by letter dated October 17, 1995, requested that Dr. Tebrock address the issues raised by Dr. Bennett.¹

In a report dated November 14, 1995, Dr. Tebrock stated that the more conventional treatment of removable dentures had been already been rendered, and appellant was unable to adapt to the dentures primarily due to a hyperactive gag reflex. Dr. Tebrock opined that remaking the dentures would not address the underlying problem. He indicated that appellant

¹ The Office enclosed a copy of Dr. Bennett's report.

had stopped smoking tobacco, and that the present volume of bone in the maxilla and mandible was sufficient for implants to be placed.

The Office referred the file to Dr. Michael Barkin, a dentist specializing in oral surgery, for evaluation. In a report dated December 17, 1995, Dr. Barkin stated in pertinent part, “The oral reconstruction using implants is excessive in this particular case considering the nature of the injury and the preexisting dental conditions.”

In a decision dated January 2, 1996, the Office denied authorization for the implant reconstruction.²

The Board has reviewed the record and finds that the case is not in posture for decision due to an unresolved conflict in the medical evidence.

In the present case, appellant’s attending dentist, Dr. Tebrock, has submitted reports in support of an implant reconstruction surgery. An Office referral dentist, Dr. Barkin, recommended against the proposed surgery. Section 8123(a) of the Federal Employees’ Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ The Board finds that there is a conflict in the medical evidence that must be resolved under section 8123(a). Accordingly, the case will be remanded to the Office to secure a reasoned medical report that resolves the conflict in this case. After such further development as the Office deems necessary, it should issue an appropriate decision.

² The January 2, 1996 letter does not contain appeal rights. It does, however, appear to represent a final adverse decision on the issue and the Board finds that it is a final decision that is subject to review by the Board; *see* 20 C.F.R. § 501.2(c).

³ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

The decision of the Office of Workers' Compensation Programs dated January 2, 1996 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
June 29, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member